

When Recorded, Please Return to:  
Lodi City Clerk  
P.O. Box 3006  
Lodi, CA 95241-1910

RESOLUTION NO. 2004-257

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LODI AND GFLIP III, L.P., RELATING TO THE DEVELOPMENT KNOWN AS ELECTRONIC DISPLAY SIGN TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD, AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE DEVELOPMENT AGREEMENT 04-01 ON BEHALF OF THE CITY OF LODI

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves Development Agreement 04-01, attached hereto marked Exhibit A, between the City of Lodi and GFLIP III, L.P., related to the development known as Electronic Display Sign to be located at 1251 South Beckman Road; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes and directs the City Manager to execute Development Agreement 04-01 on behalf of the City of Lodi.

Dated: November 17, 2004

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I hereby certify that Resolution No. 2004-257 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 17, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Howard, Land, and Mayor Hansen  
NOES: COUNCIL MEMBERS – Hitchcock  
ABSENT: COUNCIL MEMBERS – None  
ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk

EXHIBIT A

XXXXXX

RECORDING REQUESTED BY:

City Clerk  
City of Lodi  
P.O. Box 3006  
Lodi, California 95241

AND WHEN RECORDED MAIL TO:

City of Lodi  
P.O. Box 3006  
Lodi, California 95241  
Attn: City Manager

DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
CITY OF LODI  
AND  
GFLIP III, LP  
RELATING TO THE DEVELOPMENT KNOWN AS  
ELECTRONIC DISPLAY SIGN  
TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD  
AT LODI, CALIFORNIA.

DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
CITY OF LODI  
AND  
GFLIP III, LP, RELATING TO THE DEVELOPMENT KNOWN AS  
ELECTRONIC DISPLAY SIGN  
TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD  
AT LODI, CALIFORNIA

THIS DEVELOPMENT AGREEMENT (hereinafter this "Agreement") is entered into this 17th day of November, 2004 by and between the City of Lodi, a general law city, organized and existing under the laws of the State of California (hereinafter the "City", and GFLIP III, LP a California limited partnership (hereinafter the "Developer"), pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California. Developer and City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Pursuant to Government Code Section 65865(c), the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements. This Development Agreement has been processed, considered, and executed in accordance with those City rules and regulations.

C. Developer owns that certain real property located at 1251 South Beckman Road. Developer proposes to construct a single seventy five foot high electronic display sign ("the Project"). This sign requires a variance to double the maximum allowable sign area from 480 square feet to 960 square feet. Developer has a legal interest in those certain parcels of land, consisting of approximately 58 acres as diagramed in Exhibit "B" attached hereto, and more particularly described in Exhibit "C" attached hereto and incorporated herein (the "Land"). However, the Developer could construct multiple display signs on the Land. The parties agree that allowing Developer to construct a single 75 foot high electronic display instead of multiple smaller signs on the Land is a superior aesthetic alternative and represents sound planning principles.

D. For the reasons recited herein, Developer and the City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development

of the Project and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project pursuant to this Agreement, and the "Project Approvals, Developer desires to receive the assurance that it may proceed with the Project in accordance with Approvals, the Project Approvals, Subsequent Approvals and this Agreement and the ordinances, resolutions, policies, and regulations of the City in effect on the Effective Date of this Agreement, as hereinafter defined, pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the parties agree as follows:

## AGREEMENT

### Section 1. General Provisions.

1.A. Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.B. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

1.C. Effective Date. This Agreement shall become effective upon the thirtieth (30th) day following the adoption by the City Council of Resolution No. 2004-257 approving this Agreement, or the date upon which this Agreement is executed by Developer and by the City, whichever is later (the "Effective Date").

1.D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend until December 31, 2050.

### Section 2. Definitions. In this Agreement, unless the context otherwise requires:

2.A. "City" shall mean the City of Lodi.

2.B. "Developer" means GFLIP, III, LP, and includes the Developer's assignees and/or successors-in-interest.

2.C. "Effective Date" shall have that meaning set forth in Section 1.C of this Agreement.

2.D. "Geweke Family" is defined as Darryl Geweke or his spouse or any of his descendants or descendants spouses.

2.E. "Land" is defined at Recital D.

2.F. "Monument Sign" shall mean: An independent, freestanding structure supported on the ground having a solid base as opposed to being supported by poles or open braces.

2.G. "Project" is the construction and operation of a 75 foot electronic display sign with a maximum allowable sign area of 960 square feet.

2.H. "Pylon Sign" shall mean: An elevated freestanding sign supported by one or more poles, columns or open braces.

### Section 3. Obligations of Developer and City.

3.A. Obligation of Developer. In consideration of City entering into this Agreement, Developer agrees that it will comply with this Agreement and Project Approvals. The parties acknowledge that the execution of this Agreement by City is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and Approvals.

3.B. Obligation of City. In consideration of Developer entering into this Agreement, City agrees that it will comply with this Agreement, and with all of Project Approvals, and will, in accordance with the terms of this Agreement, process, and if consistent with this Agreement and applicable state law.

### Section 4. Development of Project and Parcel.

4.A. General Permitted Uses and Subsequent Approvals. The Project's: permitted uses; density and intensity of use; provisions for reservations or dedication of land for public purposes and location of public improvements; location of public utilities; and other terms and conditions of development applicable to the Project, shall be those set forth in this Agreement, the Project and the Project Approvals, and any amendments thereto, as further defined below.

4.B. Rules, Regulations, and Official Policies. The rules, regulations, standards, official policies and conditions governing the permitted uses of the Project, including those addressing the design, improvement, construction, and building standards, and specifications applicable to the Project and all infrastructure and appurtenances in connection therewith, shall be the Effective Standards.

4.C. Police Power and Taxing Power. The City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees,

and other exactions, policies, standards, laws or regulations which directly relate to the Project development. For purposes of this section, this section creates a vested right in favor of the Development concerning signage but not future non-signage development.

4.D. Compliance with California Environmental Quality Act. A negative declaration was certified by the City Council on November 17, 2004 ( Council Resolution # 2004-257). Except as required by the California Environmental Quality Act as it may be amended from time to time or by other state law, no subsequent environmental impact report, supplement to an environmental impact report, addendum to an environmental impact report, or other type of additional environmental review shall be required of any Subsequent Approval concerning the Project.

4.E. Restrictions on the Project. The Project shall be restricted in the following manner:

1. No new pylon sign shall be constructed on any of the real property identified in Exhibit C. The present Dodge monument sign shall be treated as an existing non-conforming use under the Lodi Zoning Ordinance. With the exception of the existing Dodge Monument Sign, no Monument Signs shall be constructed or maintained on the property identified in Exhibit C in excess of 12 feet in height. Moreover the existing Pylon Sign at Geweke Toyota shall be removed.

2. The Project shall not portray any motion, shall not change images more frequently than once each five seconds, shall not display any backgrounds with more than twenty-five percent of the screen area in white, shall be dimmed below 500 nits during nighttime operations; shall only advertise products and services directly related to the auto dealerships located on the land identified in Exhibit C except for community use described herein; and, shall provide that ten percent of the in-use time of the electronic display shall be made available to the following organizations for community events and messages: City of Lodi, Lodi Conference and Visitors Bureau, Lodi Chamber of Commerce, Lodi Downtown Business Partnership, Lodi-Woodbridge Wine Grape Commission or their successors in interest ("Charitable Organizations"). Furthermore, after the sign is operational, Developer agrees to participate in the Amber Alert program for privately owned electronic signs.

3. Any unused time allotted to the above entities shall be used to display time and temperature. The time allotted to the Charitable Organizations shall be randomly spread throughout the time period that the display is on each day.

4. The Developer shall not apply for any other electronic display on any of its other properties within the municipal boundaries of Lodi. This restriction shall extend to any entity that a Geweke family member enjoys a majority control and shall extend to any present or subsequently acquired real property.

5. The existing Geweke R.V. pylon sign located at 880 S. Beckman Road shall be refurbished to match the general design of the new electronic display sign

Section 5. Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the original parties, and, if Developer assigns all or part of its interest in this Agreement, the consent of such assignees to the extent that such amendment affects the assignees property, portion of the Project, or interest therein.

Section 6. Cooperation in the Event of Legal Challenge. In the event of any legal or equitable act, action, or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding.

Section 7. Default; Remedies; Termination.

7.A. Default by Developer.

1. Except for recovery for any damages incurred during the cure period, failure or unreasonable delay by Developer to perform any term, provision, or condition of this Agreement, or creation by Developer of a condition or circumstance which will render such performance impossible, for a period of three (3) months after written notice thereof from the City shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such three (3) month period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

2. As an exception to the period of time to cure a default provided by the immediately preceding paragraph, the time to cure a default of subsection 4.E.2 shall be thirty (30) days.

3. During any period of curing, the Developer shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action.

4. Subject to the foregoing, after notice and expiration of the three (3) month period without cure or commencing to cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City in the manner set forth in Government Code Sections 65865, 65867, and 65868. Termination may result in removal of the sign.

5. Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City, at its option, may give written notice of termination of this Agreement to the Developer by certified mail. Written notice of termination of this Agreement shall be effective

immediately upon mailing of such notice by defaulting party pursuant to the section entitled "Notices."

7.B. Annual Review The City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months from the date this Agreement is entered into, at which time the Developer, or successors in interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. The City, after a public hearing, shall determine on the basis of substantial evidence whether or not the Developer has, for the period under review, complied in good faith with the terms and conditions of this Agreement. If the City finds that good faith compliance has not occurred, the termination of this Agreement shall commence as provided by the default provisions of Section 7.A.

7.C. Default by City. In the event City does not accept, review, approve, or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law or equity (except as limited herein). Developer shall provide City with written notice of the default and the City shall have twenty-one (21) days to notify Developer of City's initial action to cure the default and ninety (90) days from receipt of the Developer's notice to cure the default.

7.D. Enforced Delay; Extension of Time Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, force majeure, earthquakes, fires, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project's Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by Developer and the City Manager.

7.E. Legal Action. City and Developer may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default; to enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof; or to obtain any remedies consistent with the purpose of this Agreement. City shall have the right to seek specific performance or any other legal remedy of the Developer with respect thereto nor to seek specific performance to compel performance of this Agreement. Any legal actions hereunder shall be initiated in the Superior Court of the County of San Joaquin, State of California

7.F. Applicable Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this



Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary or appropriate costs incurred in the litigation.

Section 8. Hold Harmless Agreement. Developer agrees to and shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death, and claims for property damage which may arise from the direct operations of the Developer or those of its contractors, subcontractors, agents, employees, or other persons acting on its behalf with respect to the Project. Developer agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Developer's direct activities in connection with the Project. This Section 8 includes any claims against the City concerning the validity of the Agreement or the City's compliance with the California Environmental Quality Act concerning the Agreement.

Section 9. No Agency, Joint Venture or Partnership. It is specifically understood and agreed to by and between the parties hereto that: (1) the Project is a private development; (2) the City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to its ordinances or in connection with the various Project Approvals; (3) Developer shall have full power over and exclusive control of the Project, subject only to the limitations and obligations of Developer under the Project's Approvals and this Agreement; and (4) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 10. Miscellaneous Provisions.

10.A. Assignment. Developer may assign this Agreement in whole or in part in connection with the sale of all or any portion of the Land. Notice of the assignment shall be given to the City as provided herein prior to the effective date of the assignment. Such notice shall identify and describe the assignee.

10.B. Non-Conflicting Regulations. The City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable General Plan, Specific Plan, zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the City which changes, alters or amends the rules, regulations and policies governing permitted uses of the Project or density or design of the Project applicable to the development of the Project at the Effective Date of this Agreement as provided by Government Code Section 65866, unless such change, alteration, or

amendment is permitted under this Agreement. In addition, in the event of any conflict between this Agreement and the Project Approvals, the terms of this Agreement will prevail.

10.C. Consistency with General Plan. City hereby finds and determines that execution of this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement are consistent with the General Plan.

10.D. Severability. If any term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

10.E. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

10.F. Conflict Between Agreement and Exhibits. If a conflict exists between the terms of the Agreement and the Exhibits, the Agreement shall control over the inconsistent portion of any exhibit. The Project Approvals, and Effective Standards contained in Exhibits hereto may be amended pursuant to and consistent with this Agreement without amendment to this Agreement.

Section 11. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested, or by overnight or other courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after refusal of delivery of a registered or certified letter containing such notice, properly addressed, with postage prepaid. If personally delivered, a notice shall be deemed to have been given when delivered to the party or refused by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

City of Lodi  
221 West Pine Street  
P.O. Box 3006  
Lodi, California 95241  
Attn: City Manager

If to Developer, to:

GFLIP III, LP  
P.O. Box 1210  
Lodi, California 95241

Section 12. Entire Agreement; Counterparts and Exhibits. This Agreement is executed in three (3) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of () pages and () exhibits which constitute, in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 13. Binding Effect and Recordation of Development Agreement. The burden of this Agreement shall bind, and its benefits shall inure to the successors-in-interest of the City and Developer. No later than ten (10) days after the City enters into this Agreement, the City Clerk shall at Developer's expense record an executed copy of this Agreement in the Official Records of the County of San Joaquin.

Section 14. CalTrans Permits and Approval. Developer acknowledges that it must obtain necessary approvals from the State Department of Transportation before constructing the Development.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

CITY:

CITY OF LODI

DEVELOPER:

GFLIP III, LP, a California Limited  
Partnership Corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST: City Clerk

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

CITY ATTORNEY

By: \_\_\_\_\_  
Title: City Attorney

NOTARY ACKNOWLEDGMENTS

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)